

A Meeting of the Nibley City Council held at Nibley City Hall, 455 W. 3200 S. Nibley, Utah, on Thursday, February 19, 2015.

The following actions were made during the meeting:

**Councilmember Hansen motioned to approve Ordinance 15-03—An Ordinance regulating public peace and property in Nibley City for a first reading. Councilmember Beus seconded the motion. The motion passed 4-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, and Councilmember Hellstern all in favor.**

**Councilmember Jacobsen motioned to approve Ordinance 15-02—The Nibley City subdivision ordinance; draft dated 13, February 2015. Councilmember Hansen seconded the motion.**

**Councilmember Jacobsen made a motion to amend to include the following language to section 11.3.8B.2: “A stamped report provided by a Utah license Professional Engineer or Professional Geologist exhibiting the ordinary high groundwater elevation and finished floor elevation for the subdivision.**

- a. No finished floor elevations, including basement floor elevations, shall be permitted below the aforementioned groundwater elevation**
- b. The groundwater elevation and finished floor elevation limitations shall be recorded as a boxed note (min 14 pt font) on the recorded mylar.**

**The report shall be attached to the Development Agreement.” Councilmember Beus seconded the motion. The amendment passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, and Councilmember Hellstern all in favor.**

**Councilmember Jacobsen made a motion to amend to add the suggested wording to section 11-5-5F1 of Ordinance 15-02, in place of paragraph 1: “The subdivider shall provide a pedestrian ROW as outlined below linking the cul-de-sac to the nearest adjacent public ROW unless expressly prohibited by conflict with previously developed subdivisions or land uses.**

**In the event that this provision required a trail that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street.**

**All pedestrian ROWs shall be designed for compliance with the Transportation masterplan to maximize non-motorized transportation network efficiency.**

**The right-of-way shall consist of minimum 5' sidewalk and a minimum 7.5' landscaped area on each side of the sidewalk. The developer shall submit a compliant Landscaping Plan to the City for approval. The ROW shall be dedicated to the City upon completion and acceptance by the Public Works Director”.**

**Councilmember Hellstern seconded the motion. The amendment passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hellstern, Councilmember Hansen, and Councilmember Beus all in favor.**

**Councilmember Jacobsen made a motion to amend section 11-5-6 of Ordinance 15-02 to add the following wording:**

**“Road segments longer than 660 feet shall provide a pedestrian ROW at minimum 660 ft intervals as outlined below linking the blocks to the nearest adjacent public or private street or cul-de-sac unless expressly prohibited by conflict with previously developed subdivisions or land uses.**

**In the event that this provision requires a trail that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street.**

**All pedestrian ROWs shall be designed for compliance with the Transportation Masterplan to maximize non-motorized transportation network efficiency.**

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**Councilmember Hansen seconded the motion. The motion passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hansen, Councilmember Beus, and Councilmember Hellstern all in favor.**

**The amended motion passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hansen, Councilmember Beus, and Councilmember Hellstern all in favor.**

Minutes were taken by Assistant City Recorder Cheryl Bodily

Mayor Dustin let the City Council and public in reciting the Pledge of Allegiance.

### **Call to Order**

Mayor Shaun Dustin called the Thursday, February 19, 2015 Nibley City Council meeting to order at 6:35 p.m. Those in attendance included Mayor Shaun Dustin, Councilmember Ron Hellstern, Councilmember Kathryn Beus, Councilmember Larry Jacobsen, and Councilmember Bryan Hansen. David Zook, the Nibley City Manager, Shari Phippen, Nibley City Planner, and Justin Maughn, Nibley City Public Works Director, were also in attendance. Councilmember Amber Whitaker was excused from the meeting.

### **Approval of agenda; and approval of the February 5, 2015 meeting minutes**

Councilmember Jacobsen made a motion to approve the 2-5-15 minutes and the evening's agenda. Councilmember Hellstern seconded the motion. The motion passed 4-0; with Councilmember Jacobsen, Councilmember Hellstern, Councilmember Hansen, and Councilmember Beus all in favor.

### **Discussion and consideration of Ordinance 15-030—An Ordinance regulating public peace and property in Nibley City (First Reading)**

Miss Phippen discussed the noise complaints received by the City throughout the year. She said they typically received complaints during the summer. She said there were enough complaints to justify the adoption of a noise ordinance. She explained that after her discussion with the Planning & Zoning Commission, they had elected to incorporate several offenses against public peace and property in to one ordinance. Miss Phippen discussed the comments that had been noted by city staff or the Planning & Zoning Commission included in the draft ordinance regarding definitions, curfew, truancy, disturbing the peace and excessive noise and construction noise, graffiti, littering, signs in the public right-of-way, and throwing or distributing public handbills. Miss Phippen noted that this ordinance was combining three different ordinances into one, which was why the ordinance was being presented as an entirely new ordinance.

Miss Phippen discussed enforcing noise ordinance, stating that enforcement was the hardest part of this ordinance and discussed her primary concern with quantifying by decibel levels. She said it needed to be very clear that the enforcement of noise ordinance was very complicated especially since most complaints came at night. Miss Phippen said she understood the desire to quantify noise by decibel levels to make it easier to enforce but when complaints came in the middle of the night they would have to go to the Sherriff. She didn't feel quantifying to that level was necessary because they wouldn't have the resources to go out and measure noise levels in the middle of the night. Miss Phippen stated that she hadn't had the opportunity to research or respond to the information sent to her and the City Council by Mayor Dustin. Miss Phippen and Mayor Dustin debated noise level enforcement using decibel levels versus not quantifying by decibel level. Mayor Dustin said the information he had sent out was an opportunity for the City Council to see what it might be like to have a quantifiable standard and to

facilitate discussion. Mayor Dustin demonstrated what 65 decibels sounded like by playing Led Zepplin on a portable CD player and using a sound decimeter.

Councilmember Hansen made a motion to approve Ordinance 15-03—An Ordinance regulating public peace and property in Nibley City for the first reading. Councilmember Beus seconded the motion.

Mayor Dustin asked if the motion was for the ordinance as presented and not including the inclusion of quantifiable decibels standards. Councilmember Hansen clarified that the motion was for the ordinance as presented.

Councilmember Hellstern discussed sports noise and felt they should include city sanctioned sports activities.

Councilmember Jacobsen discussed litigation that was pursued by himself and members of his neighborhood regarding noise nuisances. He said he felt they didn't have the right answer and said it had taken a judge to decide if there was excessive noise that kept the residents from enjoying the peace and quiet of their property. Councilmember Jacobsen said noise was hard to code into an ordinance. He said he felt they needed to quantify noise if they did anything about it and didn't feel they had a workable ordinance. He also said they needed to have different levels for day time and night time. He said they couldn't adopt an ordinance which left what was excessive arbitrary. Mayor Dustin, Councilmember Hansen, and Councilmember Jacobsen discussed the cost of measuring noise. Miss Phippen expressed that if the City Council wanted to make the ordinance quantifiable then they would have to ensure the citizens knew they would need to go to the Sheriff's department for enforcement because it wasn't always possible for city staff to get away when a call came in. The City Council discussed how, when, and in what circumstances they could quantify decibel levels.

Councilmember Jacobsen asked for general consent to end debate and vote on the motion. There was no opposition.

Councilmember Hellstern was in favor.

Councilmember Jacobsen was in favor.

Councilmember Beus was in favor.

Councilmember Hansen was in favor.

The motion passed 4-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, and Councilmember Hellstern all in favor.

Councilmember Beus said she felt they needed to quantify the noise levels. Miss Phippen said she would work with Mayor Dustin on quantifiable standards, day time and night time levels, and more "user friendly" definitions. Councilmember Jacobsen asked Miss Phippen if she had come across any other cities who quantified noise levels. Miss Phippen said she hadn't in her limited research. Mayor Dustin reviewed his tasked items adding the time period for measurement and identifying sound pressure meters to his list.

Miss Phippen and Councilmember Beus discussed the fine for violating the noise ordinance. Miss Phippen said it was usually an infraction with a fine being set forth by a judge.

**Public Hearing—A public hearing to receive input regarding Ordinance 15-02—An update to the Nibley City subdivision ordinance**

Miss Phippen said the primary point of discussion regarding this ordinance was secondary water systems. She said she, Mr. Zook, and Justin Maughn had discussed mandating or encouraging secondary water and had decided it was premature to make the decision to require them at this point. She said there may be areas in the city where secondary systems were a good idea and some places where they were not possible. She would like to see the city study the issue and would like to see secondary systems encouraged and incentivized but not required. She thought incentives allowed people to see the benefits for themselves rather than doing something because they are told they have to. Miss Phippen said she had additional concerns with Mayor Dustin's suggestions and comments on connectivity and public rights-of-way.

Mayor Dustin gave directions to the public present and opened the public hearing at 7:24 p.m.

Barbara Wilden said she and Ms. Corlyss Drinkard felt that Planned Unit Development (PUD) should stay "out the door" and that as Nibley City continued to be developed that there be more emphasis placed on open space; half-acre lots. She said she and Ms. Drinkard were concerned with Nibley becoming a city of apartments and PUDs.

Seeing no further comment, Mayor Dustin closed the public hearing at 7:27 p.m.

**Discussion and consideration of Ordinance 15-02—An update to the Nibley City subdivision ordinance (Second Reading)**

Miss Phippen commented on Mayor Dustin's suggested revisions. She said she hadn't had time to review the transportation master plan as it related to the Mayor's suggestions on rights-of-way. She felt they needed more definition of what constituted an improvement to a wetland area; she said there needed to be a quantifiable standard. Miss Phippen reported on discussion with Mr. Maughn and the city engineer on some minor technical and procedural changes relating to who reviewed certain aspects of constructions that hadn't been incorporated into the ordinance yet. Miss Phippen asked the City Council that staff be provided with additional time to review and comment on Mayor Dustin's suggestions and to be able to incorporate them appropriately.

Mayor Dustin suggested the City Council adopt the Ordinance tonight. He wanted it to be clear that his vision for a secondary water system was for a city utility that provided a secondary water system to new development in the city. He felt they could pull the discussion of a secondary water system out and address it separately. He said he would make sure he would put on another agenda for later discussion. Mayor Dustin suggested they had been working on the ordinance for some time and felt they should move forward with what they had. Mr. Zook agreed with Mayor Dustin's recommendation. Miss

Phippen asked that they hold off discussion on pedestrian rights-of-way until a later date. She said she had requested funds to do a comprehensive parks and trails master plan and felt this discussion should be held until after completion of a comprehensive plan.

Councilmember Jacobsen and Mayor Dustin debated right-of-way requirements along riparian, wetland, and river areas and Mayor Dustin's 11-5-9 suggestion. Mayor Dustin discussed that Nibley's current subdivision ordinance required developers to pipe all irrigation ditches and put them underground. He said they would lose the wildlife and water and expressed that he wasn't willing to give up without a fight. He said the town he wanted to live in had trees and streams and bugs things that people can get to.

Councilmember Jacobsen made a motion to approve Ordinance 15-02—The Nibley City subdivision ordinance; draft dated 13, February 2015. Councilmember Hansen seconded the motion.

Councilmember Jacobsen stated that this draft had been made available to the public on the website and had been made available for public comment. Councilmember Beus referenced page 6, 11-3-8 and said she liked that they were including this but felt they needed to define "basement" better. Mayor Dustin said this was the reason he had proposed the revision to 11-3-8B.2

"A stamped report provided by a Utah license Professional Engineer or Professional Geologist exhibiting the ordinary high groundwater elevation and finished floor elevation for the subdivision.

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The report shall be attached to the Development Agreement."

Miss Phippen asked the Major to be excused for a personal commitment. Councilmember Jacobsen asked if the changes that had been suggested during Miss Phippen's discussion with Mr. Maughn had been included in the proposed ordinance. Miss Phippen said they hadn't. Mayor Dustin asked if it would cause unnecessary problems to adopt the ordinance as it had been presented. Miss Phippen discussed how they could work under the ordinance if passed. Mayor Dustin excused Miss Phippen at 7:55.

Councilmember Jacobsen made a motion to amend to include the following language to section 11.3.8B.2: "A stamped report provided by a Utah license Professional Engineer or Professional Geologist exhibiting the ordinary high groundwater elevation and finished floor elevation for the subdivision.

- c. No finished floor elevations, including basement floor elevations, shall be permitted below the aforementioned groundwater elevation

- d. The groundwater elevation and finished floor elevation limitations shall be recorded as a boxed note (min 14 pt font) on the recorded mylar.

The report shall be attached to the Development Agreement.”

Councilmember Beus seconded the motion.

Councilmember Beus expressed her concern with passing liability to Nibley City if there were to be flooding. Miss Phippen and Mr. Zook discussed use of a professional geologist and the opinion expressed by Nibley’s attorney and engineer. Councilmember Jacobsen described geological practices.

Mayor Dustin excused Miss Phippen at 8:07.

Mr. Maughn expressed his concerns with land drains and suggested Nibley City needed consider if they needed to take care of land drains. He suggested they should add wording that developers needed to research whether their land had drains and how they would content with land drains on their property.

The amendment passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, and Councilmember Hellstern all in favor.

Mayor Dustin discussed right-of-way accesses and read from Nibley’s Transportation Master Plan. He said he was willing to table the right-of-way discussion since he felt they intended to bring several items back for discussion. Mayor Dustin discussed the Clear Creek subdivision and described that there was no pedestrian access to Nibley Elementary school. The City Council, Mayor Dustin, and Mr. Zook discussed bike and pedestrian connectivity in Nibley City.

Councilmember Jacobsen made a motion to amend to add the suggested wording to section 11-5-5F1 of Ordinance 15-02, in place of paragraph 1: “The subdivider shall provide a pedestrian ROW as outlined below linking the cul-de-sac to the nearest adjacent public ROW unless expressly prohibited by conflict with previously developed subdivisions or land uses.

In the event that this provision required a trail that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street.

All pedestrian ROWs shall be designed for compliance with the Transportation masterplan to maximize non-motorized transportation network efficiency.

The right-of-way shall consist of minimum 5' sidewalk and a minimum 7.5' landscaped area on each side of the sidewalk. The developer shall submit a compliant Landscaping Plan to the City for approval. The ROW shall be dedicated to the City upon completion and acceptance by the Public Works Director."

Councilmember Hellstern seconded the motion. The amendment passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hellstern, Councilmember Hansen, and Councilmember Beus all in favor.

Mayor Dustin discussed reducing the subdivision frontage requirement to trade off for the ROW trail. Councilmember Jacobsen and Councilmember Beus felt this would make the discussion too complicated to move forward.

Councilmember Jacobsen made a motion to amend section 11-5-6 of Ordinance 15-02 to add the following wording:

"Road segments longer than 660 feet shall provide a pedestrian ROW at minimum 660 ft intervals as outlined below linking the blocks to the nearest adjacent public or private street or cul-de-sac unless expressly prohibited by conflict with previously developed subdivisions or land uses.

In the event that this provision requires a trail that terminates adjacent to a compatible or undeveloped land use, viz. agriculture or undeveloped subdivision, the ROW and sidewalk shall be provided to the subdivision property line. Upon development of the adjacent land, the sidewalk and ROW shall be continued from that point through the new subdivision to the nearest public trail or street.

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Councilmember Hansen seconded the motion. The motion passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hansen, Councilmember Beus, and Councilmember Hellstern all in favor.

Councilmember Jacobsen asked Mr. Maugh for the suggestions made during discussion with Miss Phippen and asked if they were to a point that could be immediately added to the ordinance. Mr. Maugh felt they couldn't without Miss Phippen's assistance.

The City Council and Mayor Dustin discussed whether they had granted enough public input on the amended ordinance. The City Council discussed the placement of utility



easements and if the proposed amendment were considered a dedicated right-of-way or easement. The City Council voted on the amended motion.

Councilmember Hansen was in favor.

Councilmember Beus was in favor.

Councilmember Jacobsen was in favor.

Councilmember Hellstern was in favor.

The amended motion passed unanimously 4-0; with Councilmember Jacobsen, Councilmember Hansen, Councilmember Beus, and Councilmember Hellstern all in favor.

### **Council & Staff Reports**

Councilmember Hellstern announced that Nibley had received a \$100 contribution from the National Wildlife Federation for native tree plantings within city limits; preferable in city parks. He said they also had a donor that was willing to help with better sized trees.

Councilmember Hellstern reported on initial contact with the nature conservancy to discuss their protocol in contributing to nature preserves and nature parks to see if they would be willing to help with the 20 acres adjacent to Heritage Park.

Mayor Dustin reported on an alternate standard being proposed for the bridge accessing the new high school. He discussed specific differences between the UDOT standard and the Idaho Transportation Department standard.

Mayor Dustin reported on wastewater and offered information the City Council on what the six cities were proposing.

Mayor Dustin reported on meeting with Sheriff's department and the coverage they were offering. He said they would have enhanced presence in Nibley City and that their rates were going down.

Mr. Zook reported on the TAP grant that had been awarded to Nibley City.

Mr. Zook reported on the Heritage Days Park expansion project and said discussions had gone well. He discussed a planned budget resolution at the next City Council meeting and his proposed plan to apply for future RAPZ tax money.

Mr. Zook reported on the mid-year Utah League of Cities and Towns conference being held April 8-10 and asked the City Council to report to him if they were going.

Mr. Zook reported on a few city housekeeping items.

Mr. Zook told the Council about an upcoming meeting with the Stokes Nature Center. He said Councilmember Hellstern would also be attending that meeting.

Mr. Zook reported on upcoming agenda items.

Mayor Dustin reported that he would be out of town March 15-April 3 so the City Council would need to select a Mayor Pro Tempore at the next meeting.

Mayor Dustin adjourned the meeting at 9:29 p.m.